

WARREN KOCH

IBLA 76-488

Decided May 28, 1976

Appeal from decision of the Wyoming State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease W 16801-U.

Affirmed.

1. Oil and Gas Leases: Reinstatement

An oil and gas lease which has terminated by operation of law due to late payment of the annual rental may not be reinstated where the failure to pay on time was due to a lack of reasonable diligence and was not justifiable. Late payment due to a mistaken address is neither justifiable nor demonstrative of reasonable diligence.

APPEARANCES: Warren Koch, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Warren Koch appeals from the February 2, 1976, decision of the Wyoming State Office, Bureau of Land Management (BLM), denying his petition for reinstatement of oil and gas lease W 16801-U. The lease had terminated by operation of law due to appellant's failure to pay the annual rental on time. 30 U.S.C. § 188(b) (1970); 43 CFR 3108.2-1(a). The payment was due no later than January 5, 1976, but was not received until January 14, 1976. According to appellant, as a result of clerical error, he mailed the payment to the New Mexico State Office, prior to January 5, 1976. When he realized he had sent the payment to the wrong state, he promptly sent the payment to the Wyoming State Office.

[1] Leases terminated by operation of law for failure to pay the annual rental on time may be reinstated if, among other things, the reason for late payment was either justifiable or not due to a lack of reasonable diligence. 30 U.S.C. § 188(c) (1970); 43 CFR 3108.2-1(c). Reasonable diligence is defined by regulation, 43 CFR 3108.2-1(c)(2):

The burden of showing that the failure to pay on or before the anniversary date was justifiable or not due to lack of reasonable diligence will be on the lessee. Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. The authorized officer may require evidence, such as post office receipts, of the time of sending or delivery of payments. (Emphasis added.)

In a recent case very similar to the one now under consideration, we held that a payment received several days late showed that reasonable diligence had not been exercised, where the payment was sent to the wrong office prior to the anniversary date of the lease. Hiko Bell Mining & Oil Co., Inc., 24 IBLA 255 (1976). ^{1/} The appropriate regulation, 43 CFR 3103.1-2, requires that payments be made to the proper office. See also 43 CFR 3108.2-1. The proper office and its address is set forth in 43 CFR 1821.2-1. Therefore, reasonable diligence was not exercised in this case.

Neither can the failure to pay on time be considered justifiable. The Board stated in discussing the meaning of justifiable that, "what is clearly not covered are cases of forgetfulness, simple inadvertence or ignorance of the regulations * * *." (Emphasis added.) Louis Samuel, 8 IBLA 268, 274 (1972), appeal dismissed Samuel v. Morton, Civ. No. CV-74-1112-EC (C.D. Calif., August 26, 1974). The circumstances of this case clearly show that the failure to pay the annual rental on time was due to simple inadvertence.

^{1/} Judicial review pending; Hiko Bell Mining & Oil Co., Inc., v. Kleppe, Civ. No. 76-138 (D. Utah).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing

Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

